BAR MALAYSIA v. KETUA PENGARAH JABATAN PENDAFTARAN PERTUBUHAN MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
AZIZAH NAWAWI J
[JUDICIAL REVIEW NO: WA-25-181-07-2017]
27 MAY 2019

ADMINISTRATIVE LAW: *Remedies – Certiorari – Registration of Law Society of Malaysia – Registrar of Societies ('ROS') rejected Bar Malaysia's application to revoke registration – Application for judicial review by Bar Malaysia – Issues of illegality and irrationality – Whether established – Whether name and/or activities of society breached s. 7(3) of Societies Act 1966 – Whether name of society misleading or resembled name of other societies – Whether purpose of society misled members of public and members of Bar Malaysia – Whether decision of ROS rational*

UNINCORPORATED ASSOCIATIONS: *Societies – Judicial review – Registration of Law Society of Malaysia – Registrar of Societies ('ROS') rejected Bar Malaysia's application to revoke registration – Application for judicial review of ROS's decision – Whether name and/or activities of society breached s. 7(3) of Societies Act 1966 – Whether name of society misleading or resembled name of other societies – Whether purpose of society misled members of public and members of Bar Malaysia – Whether decision of ROS rational – Whether court could substitute findings of ROS*

On 29 May 2012, The Registrar of Societies ('ROS') branch in Selangor registered Persatuan Siswazah Undang-Undang Malaysia as a society under s. 7(1) of the Societies Act 1966 ('Act 335'). Subsequently, the ROS Selangor allowed the Persatuan Siswazah Undang-Undang Malaysia's name to be changed to Persatuan Guaman Malaysia ('PGM')/Law Society of Malaysia ('LSM') around June to October 2012. The applicant raised objections with regards to LSMs' registration. However, the ROS Selangor decided that LSM's name was different from the applicant and did not confuse the public and communicated the decision to the applicant. Dissatisfied with the decision, the applicant commenced an application for judicial review, seeking, *inter alia*, an order of *certiorari* to quash the ROS Selangor's decision and an order of *mandamus*, *inter alia*, directing the respondent to revoke LSM/PGM's registration as a society pursuant to its statutory duty under Act 335 and/or to change LSM/PGM's name back to Persatuan Siswazah Undang-Undang Malaysia or Law Graduates Association of Malaysia. The grounds relied on by the applicant were that: (i) the ROS had acted *ultra vires* ss. 2A and 7(3) of Act 335 in arriving at the decision to maintain LSM's name; (ii) the ROS had acted *ultra vires* ss. 2A and 7(3) of Act 335 when maintaining LSM's registration as a valid society; (iii) the decision was

unreasonable in the *Wednesbury* sense of view as: (a) LSM's name might confuse the public who assumed or may wrongly assume LSM as a part of or similar with the applicant as the sole regulatory body for advocates and solicitors registered in Malaysia; (b) LSM's role was not clear and its establishment overlapped with the applicant's function. Further, LSM violated ss. 10, 11 and 37 of the Legal Profession Act 1976 ('LPA') as its membership was open to the public which allowed members of the public who were not registered advocates and solicitors to purport as applicant's member; and (c) the registration of LSM was unlawful as it was likely to deceive or manipulate members of the public or the applicant's members; and (iv) the decision was unconstitutional under art. 162 of the Federal Constitution as the respondent and/or ROS had failed to comply with the existing laws of Act 335 and the LPA.

Held (dismissing application with costs):

(1) Subsection 2A(1) of Act 335 provides that the duty of a registered society is to conduct its activities in accordance with the provisions of the Federal and the State Constitutions, and must not violate the main tenets of the Constitution, namely the democratic system practiced in this country headed by constitutional sovereign and other rulers, the position of Islam and other religions practiced in this country, the use of the National Language, the position of the Malays and other natives in Sabah and Sarawak and the 'legitimate interests of the other communities' in Malaysia. The term 'legitimate interests of the other communities' in para (e) of sub-s. 2A(1) must refer to the other communities other than the Malays and the natives, such as the Chinese, Indians and other communities. It does not refer to the applicant, a body corporate protecting the interests of its registered members only. The applicant was not a 'community' in the context of para (e) of sub-s. 2A(1). Consequently, the name and/or the activities of the second respondent, LSM, could not be said to have violated the 'legitimate interests of the other communities' in Malaysia. There was no breach of s. 7(3) of Act 335 read with sub-s. 2A(1)(e). (paras 22-24)

(2) Under sub-s. 7(3)(d)(i) of Act 335, the ROS shall refuse to register a local society if the name under which a society is to be registered (i) appears to the Registrar to mislead or be calculated to mislead members of the public as to the true character or purpose of the society; or (ii) so nearly resembles the name of such other society as is likely to deceive members of the public or members of either society. The name LSM was different from the applicant's, Bar Malaysia. Further, the applicant was not a society, but a body corporate. Therefore, there was no issue about LSM being misleading or nearly resembled the name of other societies which would be in violation of sub-s. 7(3)(d)(i) of Act 335. (paras 26 & 28)

(3) The ROS was satisfied that the name LSM did not mislead the public as the character and purpose of the LSM did not violate Act 335 and was not similar to the applicant as LSM was subject to Act 335 whilst the applicant was incorporated under the LPA. The statutory objectives of the applicant were wider than LSM. The applicant was the sole authority having control over members of the Malaysian Bar under the LPA. Whereas, the membership of LSM included those who were legally qualified but had not been admitted to the Bar under the LPA. The LSM had no authority over members of the Malaysian Bar as it was registered only as a society under Act 335. The objectives of LSM included protecting the welfare of its members and to foster a closer relationship amongst its members. Therefore, LSM did not appear to mislead or be calculated to mislead members of the public as to the true character or purpose of the society. (paras 31, 34 & 35)

(4) The decision of ROS was not irrational as ROS had done the necessary investigations and was satisfied that the name of LSM did not breach the provisions of Act 335. Subsection 7(3)(d)(i) of Act 335 gives the discretion to the ROS to make a finding if the name of the society 'appears' to mislead or is calculated to mislead the public. It was not for the court to go behind the opinion of the ROS and make its own finding, as this would be usurping the limited powers of the ROS. Where the ROS had directed his mind to the facts and objectives of Act 335 and was satisfied that the name LSM did not mislead the public as the character and purpose of the LSM did not violate Act 335, it was not for the court to substitute the opinion of the ROS. Hence, the decision of the ROS was not irrational. (paras 38, 39 & 41)

Case(s) referred to:

Booi Kim Lee v. YB Menteri Sumber Manusia, Malaysia & Anor [1999] 4 CLJ 121 HC ***(refd)***

Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374 ***(refd)***

Gasing Meridian Sdn Bhd v. Datuk Bandar Kuala Lumpur [2004] 1 CLJ 219 CA ***(refd)***

Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu [2008] 6 CLJ 573 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 162

Legal Profession Act 1976, ss. 10, 11, 37, 41, 42

Rules of Court 2012, O. 53 r. 3(2)

Societies Act 1966, ss. 2A(1)(e), 3A, 7(1), (3)(a), (d)(i), 9(c), 13(1)(c)(iv), 13A, 17, 41, 42

For the appellant - Asim Ng; M/s Fahri & Co

For the 1st respondent - Mazlifah Ayob; SFC

For the 2nd respondent - Indera Abdul Aziz A Rahman, Ashraf Appoo & Nurul Azua Abu Yazid; M/s Nik Saghir & Ismail

Reported by S Barathi

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JUDGMENT

Azizah Nawawi J:

Application

[1] This is the applicant's application for judicial review, seeking the following reliefs:

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(i) An order of *certiorari* to quash the following decisions immediately:

(a) The first respondent's (Registrar of Society, Selangor branch) ("ROS") decision on 31 March 2017 that the name Persatuan Guaman Malaysia ("PGM") or Law Society of Malaysia ("LSM") is different from the applicant and does not confuse the public (the "decision"); and/or

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(b) The ROS's decision that allowed the change of name from Persatuan Siswazah Undang-Undang Malaysia to LSM/PGM; and/or

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(c) LSM/PGM's registration certificate dated 29 May 2012 with Registration No. PPM-015-10-29052012; and/or

(ii) An order of *mandamus* directing the respondent to implement the followings immediately:

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(a) To revoke LSM/PGM's registration as a society pursuant to its statutory duty under the Societies Act 1966 ("Act 335"); and/or;

(b) To change LSM/PGM's name back to Persatuan Siswazah Undang-Undang Malaysia or Law Graduates Association of Malaysia; and/or

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(c) To reconsider the applicant's objection letters in accordance with ss. 2A, 3A, 7, 9(c), 13, 13A, 17, 41 and 42 of the Act; and/or

(iii) Further or alternatively, for the following declarations:

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(a) That LSM/PGM is an unlawful society pursuant to s. 17 of Act 335; and/or

(b) That the registration of LSM/PGM's name is unlawful and confuses the public; and/or

H

(c) That the decision is null and void; and/or

(d) That LSM/PGM's roles overlap with the applicant's; and/or

(e) That LSM/PGM's registration certificate dated 29 May 2012 is null and void; and/or

I

(iv) Any further and/or other relief and/or order that this court deems fit and just; and/or

(v) Costs in the cause.

[2] The grounds of the application as stated in the statement pursuant to O. 53 r. 3 ROC 2012 are as follows:

(i) That the ROS had acted *ultra vires* ss. 2A and 7(3) of Act 335 in arriving at the decision to maintain LSM's name;

(ii) That the ROS had acted *ultra vires* ss. 2A and 7(3) of Act 335 when maintaining LSM's registration as a valid society;

(iii) That the decision is unreasonable in the *Wednesbury* sense of view based on the following:

(a) LSM's name may confuse the public who assumes or may wrongly assume LSM as a part of or similar with the applicant as the sole regulatory body for advocates and solicitors registered in Malaysia;

(b) LSM's role is not clear and its establishment overlaps the applicant's function. Further LSM violates ss. 10, 11 and 37 of the LPA as its membership is open to the public which allows members of the public who are not registered advocates and solicitors to purport as applicant's member; and

(c) The registration of LSM is unlawful as it is likely to deceive or manipulate members of the public or the applicant's members; and

(iv) That based on the above grounds, the decision is therefore unconstitutional under art. 162 of the Federal Constitution as the respondent and/or ROS had failed to comply with the existing laws of Act 335 and the LPA 1976.

[3] Having considered the application and the submission of the parties, this court had dismissed the application with costs.

The Salient Facts

[4] The applicant is a body corporate established under s. 41 of the Legal Profession Act 1976 (the "LPA 1976").

[5] The ROS is a department under the Ministry of Home Affairs which handles non-governmental organisations and political parties. The main function of the ROS is to administer and enforce Act 335, the Societies Regulations 1984 and policies regarding societies, control and monitor societies and to manage and keep records relating to the registration of societies and its registered branches.

[6] On 29 May 2012, the ROS's branch in Selangor had registered Persatuan Siswazah Undang-Undang Malaysia as a society under s. 7(1) of Act 335 with the Registration No. PPM-015-10-29052012.

[7] Subsequently, the ROS Selangor had allowed the Persatuan Siswazah Undang-Undang Malaysia's name to be changed to Persatuan Guaman Malaysia (PGM)/Law Society of Malaysia (LSM) around June to October 2012.

[8] On 5 March 2015, the applicant conducted a search on LSM at ROS Selangor. The applicant then issued an objection letter to the respondent on 23 July 2015 with regards to LSM's registration.

[9] On 21 March 2016, the respondent and the applicant held a meeting regarding the applicant's objections against two registered societies namely the Malaysian Lawyers Association (the "MLA") and LSM.

[10] The applicant continued to raise their objections *vide* letters dated 7 April 2016 to ROS Selangor (the second objection) and the respondent's Kuala Lumpur branch (the "ROS KL") respectively. In furtherance to that, the applicant's solicitor had issued another objection letters (the third objection) to both the ROS KL and ROS Selangor on 12 May 2016 and 30 May 2016 respectively.

[11] The ROS KL had cancelled the MLA's registration by a revocation order dated 2 September 2016 pursuant to s. 13(1)(c)(iv) of Act 335.

[12] However, *vide* a letter dated 31 March 2017, ROS Selangor had decided that LSM's name is different from the applicant and does not confuse the public. The decision was communicated to the applicant's solicitor on 7 April 2017.

[13] Being dissatisfied with the decision of ROS Selangor, the applicant commenced this proceeding against the ROS and the second respondent.

The Findings Of The Court

[14] In *Booi Kim Lee v. YB Menteri Sumber Manusia & Anor* [1999] 4 CLJ 121; [1999] 3 MLJ 515, Justice KC Vohrah adopted Lord Diplock's classification of grounds of judicial review in the House of Lords case of *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374. The three grounds described by Lord Diplock are:

(i) illegality;

(ii) irrationality; and

(iii) procedural impropriety.

[15] By illegality as a ground for judicial review, it means "that the decision-maker must correctly understand the law that regulates his decision-making power and must give effect to it" and that "... the authority concerned has been guilty of an error of law in its action as for example, purporting to exercise a power which in law it does not possess."

[16] By irrationality it means '*Wednesbury* unreasonableness' and "applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided upon could have arrived at it".

[17] By procedural impropriety, it includes "failure by an administrative tribunal to observe procedural rules that are expressly laid out ..." and "duty to act fairly".

[18] In the present application, the applicant is relying on the grounds of illegality and irrationality. The main thrust of the applicant's submission are as follows:

(i) that the ROS had acted *ultra vires* s. 7(3)(a) of Act 335 read with sub-s. 2A(1)(e);

(ii) that the ROS had acted *ultra vires* sub-s. 7(3)(d)(i) of Act 335; and

(iii) that the ROS decision is unreasonable.

Issue (i) Whether The ROS Had Acted Ultra Vires Sub-s. 7(3)(a) Of Act 335 Read With Sub-s. 2A(1)(e)

[19] Subsection 7(3)(a) of Act 335 reads:

> (3) The Registrar shall refuse to register a local society:
>
> (a) it appears to him that such local society is unlawful under the provisions of this Act or any other written law or is likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia;

[20] It is the submission of the applicant that the ROS Selangor should have refused to register LSM because it appears that the use of LSM is unlawful under sub-s. 2A(1)(e) of Act 335, as such name is likely to be used for unlawful purpose. The applicant takes the position that LSM's name bears major resemblance to the applicant's name, which is likely to confuse and/or deceive the public. Therefore, because of the resemblance to the applicant, LSM's members (who are not the applicant's members after being admitted and thereby qualified under ss. 10 and 11 of the LPA 1976), may represent themselves as "lawyers" and provide legal advice to the public, which is in breach of s. 37 of the LPA 1976.

[21] Section 2A(1)(e) of Act 335 reads as follows:

> Registered societies to act in fulfilment of the Constitution
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> 2A. (1) It shall be the duty of every registered society in carrying out its activities and in conducting its affairs to ensure that they are in accord with, and conducive to the fulfilment of and adherence to, the provisions of the Federal Constitution and the State Constitutions, and where any of the activities or affairs of any society is in any manner violative of, or derogatory to, or militates against, or shows disregard for:
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> (a) the system of democratic government headed by a constitutional sovereign of Malaysia, and, in the States, by the respective constitutional Rulers or Yang di-Pertua Negeri; or

A (b) the position of Islam as the religion of Malaysia, with other religions being practised in peace and harmony; or

(c) the use of the National Language for official purposes; or

(d) the position of the Malays and of the natives of the States of Sabah and Sarawak; or

B (e) the legitimate interests of the other communities,

as provided under the Federal Constitution or any of the State Constitutions, the Registrar may cancel the registration of the society after giving the society an opportunity to make representations to him.

C **[22]** Subsection 2A(1) of Act 335 provides that the duty of a registered society is to conduct its activities in accordance with the provisions of the Federal and the State Constitutions, and must not violates the main tenets of the Constitution, namely the democratic system practiced in this country headed by constitutional sovereign and other rulers, the position of Islam and other religions practiced in this country, the use of the National Language, D the position of the Malays and other natives in Sabah and Sarawak and the 'legitimate interests of the other communities' in Malaysia.

[23] Therefore, I am of the considered opinion that the term 'legitimate interests of the other communities' in para. (e) of sub-s. 2A(1) must refer to E the other communities other than the Malays and the natives, such as the Chinese, Indians and other communities. It does not refer to the applicant, a body corporate protecting the interests of its registered members only. The applicant is not a 'community' in the context of para. (e) of sub-s. 2A(1).

[24] Consequently, the name and/or the activities of the second F respondent, LSM cannot be said to have violated the 'legitimate interests of the other communities' in Malaysia, as the applicant is not a community within the context of para. (e) of sub-s. 2A(1) of Act 335. Therefore there is no breach of s. 7(3)(a) of Act 335 read with sub-s. 2A(1)(e).

Issue (ii) Whether The ROS Had Acted Ultra Vires Sub-s. 7(3)(d)(i) Of Act 335

G **[25]** The applicant submits that the ROS had acted *ultra vires* sub-s. 7(3)(d)(i) of Act 335, as the name LSM appears to mislead or calculated to mislead the public. Subsection 7(3)(d)(i) reads as follows:

(3) The Registrar shall refuse to register a local society where:

H (a) ...

(b) ...

(c) ...

(d) the name under which the society is to be registered:

I (i) appears to the Registrar to mislead or be calculated to mislead members of the public as to the true character or purpose of the society or so nearly resembles the name of such other society as is likely to deceive members of the public or members of either society;

[26] Under sub-s. 7(3)(d)(i) of Act 335, the ROS shall refuse to register a local society if the name under which a society is to be registered:

(i) appears to the Registrar to mislead or be calculated to mislead members of the public as to the true character or purpose of the society; or

(ii) so nearly resembles the name of such other society as is likely to deceive members of the public or members of either society.

[27] The applicant submits that because LSM bears a major resemblance to the applicant's reputation (as shown in exh. CWK 11) and that the Singapore Bar is known as the Law Society of Singapore, then this is likely to confuse and/or deceive the public. In para. 11 of the amended statement pursuant to O. 53 r. 3(2) of the ROC 2012, the applicant states as follows:

> 11. This is of substantial public interest as LSM's name, Law Society of Malaysia, appears to mislead the public as to the true character or purpose or so nearly resembles the name of the Applicant as likely to deceive the public and the Applicant's members that they are similar or a subsidiary of the Applicant.

[28] In the first place, the name LSM is different from the applicant's, Bar Malaysia. Further, the applicant is not a society, but a body corporate. Therefore, there is no issue about LSM being misleading or nearly resembles the name of other societies, that is the applicant's name, which will be in violation of sub-s. 7(3)(d)(i) of Act 335.

[29] The next issue is whether the name appears to the Registrar to mislead or be calculated to mislead members of the public as to the true character or purpose of the society.

[30] In his affidavit, the ROS of Selangor, *inter alia*, states as follows:

> 6. Selanjutnya saya menyatakan bahawa kelulusan pertukaran nama PGM tersebut diberikan setelah ROS Selangor berpuas hati bahawa nama yang dipinda tersebut masih selari dengan matlamat penubuhan persatuan, tidak menyerupai mana-mana pertubuhan lain yang berdaftar di bawah Akta Pertubuhan 1966 [Akta 335] dan tidak bercanggah dengan Akta 335 itu sendiri.
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> ...
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> 16. Saya menafikan perenggan 23 dan 24 Afidavit Sokongan dan menyatakan seperti berikut:
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> > 16.1. nama dan matlamat PGM adalah selari dengan perlembagaan pertubuhan tersebut dan tidak bercanggah dengan Akta 335;
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> > 16.2. PGM yang dikawal selia oleh Akta 335 adalah berbeza dengan Pemohon yang ditadbir di bawah Akta Profession Undang-Undang 1976 [Akta 166];
> >
> > 16.3. Dapatan ROS Selangor adalah munasabah dan tidak pada bila-bila masa bercanggah dengan peruntukan Akta 335.

[31] The ROS had directed his mind to the facts and objectives of Act 335 and was satisfied that the name LSM does not appear to mislead the public as the character and purpose of the LSM does not violate Act 335, and is not similar to the applicant as LSM is subject to Act 335 whilst the applicant is incorporated under the LPA 1976.

[32] From the constitution of LSM, the objectives of LSM is provided by cl. 3, which is as follows:

(1) Menjaga kebajikan ahli-ahli;

(2) Membuat dan menganjurkan kajian, kertas kerja, peninjauan atau penyelidikan atas aspek-aspek terbabit dalam bidang profession ini;

(3) Mengeluar dan menyebarkan maklumat-maklumat berkaitan isu-isu bidang profesion ini;

(4) Meningkatkan taraf professionalism di kalangan ahli-ahli;

(5) Memberi kerjasama kepada kerajaan dan agensinya dalam melaksanakan dasar-dasar negara khususnya yang melibatkan profession ini; dan

(6) Untuk mengeratkan lagi perhubungan diantara peguam-peguam yang berada di pelbagai sector di negara ini.

[33] On the other hand, the objectives of the applicant are set out by s. 42 of the LPA 1976, which are as follows:

(1) The purpose of the Malaysian Bar shall be:

(a) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour;

(b) to maintain and improve the standards of conduct and learning of the legal profession in Malaysia;

(c) to facilitate the acquisition of legal knowledge by members of the legal profession and others;

(d) where requested so to do, to express its view on matters affecting legislation and the administration and practice of the law in Malaysia;

(e) to represent, protect and assist members or of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia;

(f) to establish libraries and to acquire or rent premises to house the libraries and offices of the Malaysian Bar or amenities for the use of members either alone or in conjunction with any other body or society;

(g) to protect and assist the public in all matters touching ancillary or incidental to the law;

(h) to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors;

(i) to award prizes and scholarships and to establish and subsidise lecturership in educational institutions in subjects of study relating to law;

(j) to grant pecuniary or other assistance to any association, institute, board or society in Malaysia in the interest of the legal profession or of the law students;

(k) to afford pecuniary and other assistance to members or former members of the Malaysian Bar and to the wives, widows, children and other dependants, whether of members, former members or deceased members who are in need of any such assistance;

(l) to promote good relations and social intercourse amongst members and between members and other persons concerned in the administration of law and justice in Malaysia;

(m) to encourage, establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any local or international association and become a member thereof; and

(n) to establish a Compensation Fund.

[34] From the above, it is very clear that the objectives of the applicant are different from the LSM. The statutory objectives of the applicant are wider than LSM, including establishing and maintaining relations with international bar associations and to establish a compensation fund. The duty of the applicant is to protect its members, who have been admitted as members of the Malaysian Bar. The applicant is the sole authority having control over members of the Malaysian Bar under the LPA 1976.

[35] However, the membership of LSM includes those who are legally qualified but have not been admitted to the Bar under the LPA 1976. The LSM has no authority over members of the Malaysian Bar as it is registered only as a society under Act 335. The objectives of LSM includes protecting the welfare of its members and to foster a closer relationship amongst its members. Therefore, I am of the considered opinion and I agree with the ROS that LSM does not appear to mislead or be calculated to mislead members of the public as to the true character or purpose of the society. Added to that, there is no evidence given by the applicant of any complaints made by members of the public that they have been misled in the first place.

[36] As such, I am of the considered opinion that there is no breach of sub-s. 7(3)(d)(i) of Act 335.

Issue (iii) Whether The ROS' Decision Is Unreasonable

[37] The applicant takes the position that the ROS decisions to change LSM's name in 2014 and maintaining the same in 2017 are extremely unreasonable that no reasonable authority could ever have come to it. Added to that, it is said that the process of ROS in arriving at its decision is irrational

A because the ROS did not or failed to carry out a proper investigation. The applicant submits that the ROS has failed to take into consideration ss. 2A and 7(3) of Act 335 in arriving at his decision.

[38] However in his affidavit, the ROS has affirmed that he had done the necessary investigations by looking into the documents given by LSM, including LSM's constitution. Having done the investigations, the ROS was satisfied that the name of LSM does not breach the provisions of Act 335. Therefore, it cannot be said that the decision of the ROS is irrational.

[39] It must be emphasised that sub-s. 7(3)(d)(i) of Act 335 gives the discretion to the ROS to make a finding if the name of the society 'appears' to him to misled or calculated to mislead the public. In such a situation, it is not for this court to go behind the opinion of the ROS and make its own finding, as this would be usurping the limited powers of the ROS. The court would then have to substitute the subjective opinion of the ROS. If this is allowed, the court will be taking over the role of the ROS, and this will be contrary to Act 335. In *Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu* [2008] 6 CLJ 573, it was held that:

> From the **provisions of the general orders it is clear that it is never the intention of the legislators that the courts should step into the shoes of the disciplinary authority in deciding** whether it was fair to the respondent to have granted him a right to make oral representations or whether he should be given such right although he did not ask for it.
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> (emphasis added)

[40] In *Gasing Meridian Sdn Bhd v. Datuk Bandar Kuala Lumpur* [2004] 1 CLJ 219, Abdull Hamid Mohamed then JCA, said that "It is the Commissioner who has to be satisfied. It is not for the court to be satisfied and then force it on the Commissioner".

[41] Therefore, where the ROS had directed his mind to the facts and objectives of Act 335 and was satisfied that the name LSM does not appear to mislead the public as the character and purpose of the LSM does not violate Act 335, it is not for this court to substitute the opinion of the ROS. As such, it cannot be said that the decision of the ROS is irrational.

Conclusion

[42] Premised on the reasons enumerated above, I am of the considered opinion that there is no merit in this application and the same is dismissed with costs.